IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

R.S.A. No.2261 of 2009 (O&M)
Date of Decision: 30.5.2009

Sham Lal Sharma.

..... Appellant through Shri
Raj Mohan Singh,Advocate.

Versus

Dharamshala Jamna Dass Chhabil Dass,Uklana Mandi.

..... Respondent.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

Mahesh Grover,J.

C.M.No.6764-C of 2009

For the reasons stated therein, the application is accepted and the delay of 133 days in the refiling of the appeal is condoned.

R.S.A.No.2261 of 2009

This Regular Second Appeal is directed against judgments and decrees dated 5.2.2008 and 10.6.2008 passed respectively by the Civil Judge (Junior Division), Hisar (hereinafter described as `the trial Court') and the Additional District Judge, Hisar (referred to hereinafter as `the First Appellate Court') whereby the suit of the plaintiff-respondent was partly decreed and the appeal of the defendant-appellant was dismissed.

The respondent had filed a suit for possession against the

appellant. It was pleaded that the respondent is a religious and charitable institution; that a Dharamshala was constructed by it; that the appellant was employed about 15 years by Harish Chander, whose forefathers had created the respondent-trust to manage the affairs of the said Dharamshala; that in lieu of the salary, accommodation of two rooms had been provided to him; that since the building of the Dharamshala became unfit and unsafe for human habitation, the services of the appellant were no more required; that accordingly a registered notice was sent terminating his services with effect from 30.6.2006; that he was also called upon to hand over the vacant possession of the accommodation in his possession, but he failed to do so; and that by his act of not handing over the possession of the accommodation in question, he had made himself liable to pay the damages to the tune of Rs.1000/- per month on account of use and occupation charges with effect from 1.7.2006 till the delivery of possession.

On the basis of the above averments, the respondent had prayed that a decree for possession be passed in its favour along with the consequential relief of payment of damages by the appellant as aforesaid.

Upon notice, the appellant appeared and filed his written statement contesting the suit. It was pleaded that the respondent had demolished the Dharamshala after filing of the instant suit and the rooms in his possession have also been demolished. He alleged that the suit was filed in order to deprive him of the salary since the year 1985 at the rate of Rs.3000/- per month which was due. It was averred that the appellant was appointed as Manager by the brother of Chhabil Dass, who had constructed

the Dharamshala at a salary of Rs.3000/- per month with effect from 1.1.1975 and apart from the said salary, he was provided with two rooms, kitchen, bathroom and toilet in the Dharamshala itself. It was denied that Harish Chander had employed the appellant about 15 years back. The service of notice about the termination of the licence of the appellant to reside in the accommodation in question was also denied and it was alleged that no notice was received by him. The claim of the respondent about its entitlement to receive the damages at the rate of Rs.1000/- per month as use and occupation charges was refuted.

The parties went to trial on the following issues:-

1. Whether the plaintiff is entitled for possession of two rooms, which are part of the Dharamshala Jamna Dass Chhabil Dass as shown in red colour and marked by letters ABCD in the site plan attached with the plaint?OPP
2. Whether the plaintiff has no cause of action to file the present suit?OPD
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the suit of plaintiff is not maintainable in the present form?OPD
5. Whether the plaintiff has not affixed the stamp duty as per Govt. ad valorem?OPD
6. Relief.

After appraisal of the entire evidence on record, the trial Court

partly decreed the suit of the appellant in the following terms:-

> "As a sequel to my above discussion, this suit filed by the plaintiff succeeds and the same is partly decreed with costs. A decree for possession of two rooms marked with letters ABCD shown in red colour in the site plan attached with the plaint is passed in favour of the plaintiff and against the defendant. The defendant is directed to deliver the vacant possession of the rooms in dispute to the plaintiff within two months from today failing which the plaintiff would be at liberty to get the possession recovered through the intervention of the Court. The defendant is further directed to pay the damages to the tune of Rs.1`00/- per month as use and occupation charges of the said two rooms from the date of filing of this suit till the delivery of the vacant possession thereof. Decree sheet be drawn accordingly. Original unexhibited documents be returned back to the parties concerned as per rules after retaining the photo copy of the same on the file. File after due compliance be consigned to the record room."

The appeal preferred by the appellant was dismissed by the First Appellate Court.

Hence, this Regular Second Appeal.

Learned counsel for the appellant contended that the findings recorded by the Courts below are erroneous & perverse and, therefore, are liable to be set aside. He further contended that the termination of the

services of the appellant was independent of his right to stay on the suit property and, therefore, the Courts below ought to have considered this aspect of the matter. According to the learned counsel for the appellant, the following questions of law arise for consideration of this Court:-

1. Whether the suit should have been filed by a duly authorized person having authority to act/ represent the public Trust and to file the suit as required by the provisions of the Trust act?
2. Whether there is no resolution passed by the plaintiff-Trust authorizing Sh.Harish Chander to file the present suit and Sh.Harish Chander is not a competent person to file the suit?
3. Whether no proper court fee has been paid by the plaintiff on plaint, though specific liquidated sum as demanded on account of use and occupation has been paid by the defendant/appellant?
4. Whether the plaintiff has not paid the salary @ Rs.3000/- per month to the defendant w.e.f. 1.1.1975, if so, to what effect?
5. Whether there is no General Power of Attorney in favour of Sh.Harish Chander, authorizing him to file the suit on behalf of the Public Trust (plaintiff)?
6. Whether the impugned judgment and decree are legally sustainable?

After hearing the learned counsel for the appellant and perusing the impugned judgments, I am of the opinion that the appeal has no merit.

Concededly, according to the pleadings of the pleadings of the

parties, the building of the Dharamshala was unsafe and unfit for human habitation. The appellant has not denied that he was an employee in the Dharamshala and was in occupation of two rooms therein. However, he has tried to set up a plea that he was entitled to arrears of salary to which he was entitled to and was wrongfully deprived of the same. But, such a plea has no concern with the controversy in the suit. If there was any dues payable to the appellant from the respondent, the same could have been recovered by him by filing an appropriate suit. In the instant case,his possession on the two rooms clearly related to his employment which stood terminated. His licence to stay on the premises in question was also revoked by serving a notice upon him, which is Exhibit P3, the receipt which has been admitted by him while appearing in the witness box as DW1. But, he did not comply with the same. In this view of the matter, the licence of the appellant to stay on the premises in question was clearly linked to his employment & which right was terminated by a separate notice served upon him.

On the basis of the above discussion, the questions of law which have been formulated by the learned counsel for the appellant and reproduced above, do not arise at all for consideration of this Court.

Therefore, this appeal is dismissed being devoid of any merit.

May 30,2009 **(Mahesh Grover)**
"SCM" **Judge**